

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, November 9, 2011, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: Tom Day, Vice-Chairman
Walter Schmidt
Nancy Bonniwell
Richard Bayer

BOARD MEMBERS ABSENT: Robert Bartholomew, Chairman

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Mary E. Finet, Senior Land Use Specialist
Kenneth Witzig, BA11:039, petitioner
Michael McGarry, BA11:039, neighbor
Bob Sokolowicz, BA11:039, neighbor
Ricky and Beth, Steiner, BA11:040, petitioners
Michael Kaiser, BA11:041, petitioner
Paul Schultz, Sunarc Studio, BA11:041, architect
Karen and Greg Wilkey, BA11:042, petitioners
Steve Sobieski, Weisflogs Design Center, BA11:042, builder
Brian Thomas, Johnson's Nursery Inc., BA11:042, landscape
designer
Mark and Maggie Smith, BA11:042, neighbors
Dan Schalk

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bayer *I move to approve the Summary of the Meeting of October 12, 2011.*

The motion was seconded by Mr. Schmidt and carried unanimously.

NEW BUSINESS:

BA11:039 KENNETH J. WITZIG:

Mr. Schmidt *I move to adopt the staff's recommendation for approval, for the reasons set forth in the Staff Report and with all the conditions set forth in the Staff Report.*

The motion was seconded by Mr. Bayer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the lot area, lot width, lake frontage, and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to permit the petitioner to transfer a portion of his lot to the adjacent lot to the northeast, subject to the conditions noted below. The Planning and Zoning Division staff also recommended **approval** of the request for variances from the boathouse requirements of the Waukesha County Shoreland and Floodland Protection Ordinance and **approval** of a special exception from the accessory building floor area ratio requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit a boathouse to remain following the land transfer, subject to the following conditions:

1. The land transfer must be in substantial conformance with the plans submitted with the variance request and may not reduce the size of the Witzig property to less than 14,000 sq. ft.
2. A Certified Survey Map indicating the proposed new lot line must be prepared by a registered land surveyor. The Certified Survey Map must include both the Witzig and the McGarry properties and it must be reviewed and approved by the Town of Oconomowoc and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff, prior to its recordation in the Waukesha County Register of Deed's office. Unless an extension is granted by the Board of Adjustment, the Certified Survey Map must be recorded within two (2) years of the date of the Board's decision.
3. The residence closest to the road and the bath house near the lake must be removed from the property, prior to the Director of the Waukesha County Department of Parks and Land Use affixing his signature to the Certified Survey Map.
4. The Certified Survey Map shall contain a restriction that the upper level of the boathouse on the Witzig property may not be utilized as a second living unit on the property.
5. In conjunction with the review and approval of the Certified Survey Map, the owners will be required to apply to the Environmental Health Division of the Waukesha County Department of Parks and Land Use for a "Preliminary Site Evaluation" of the existing septic systems. If a problem with the septic systems is discovered as a result of the "Preliminary Site Evaluation", that problem must be resolved or a Sanitary Permit issued for a new septic system, prior to the Director affixing his signature to the Final Certified Survey Map.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the variances needed to permit the proposed land transfer would prevent the petitioner from transferring a small portion of his property, which no longer serves a useful purpose to him, to his neighbor. That would be unnecessarily burdensome, as would denial of the variances needed to permit the existing boathouse to remain following the land transfer.

Approval of the requested variances and special exception will facilitate the removal of the second residence, which is also a structure with a severely non-conforming offset and road setback, thus eliminating both a major non-conforming use and a severely non-conforming structure. In addition, it will also facilitate the removal of the severely non-conforming bath house, have a positive impact on the floor area ratio, and increase the overall open space. Further, the adjacent property to the northeast will become more conforming in a number of ways, following the proposed land transfer. Any additional non-conformities that will occur as a result of the lot line adjustment are minor and are outweighed by the positive effects that will result from the removal of the second residence on the property and the removal of the severely non-conforming bath house. Finally, the two-story boathouse is an existing structure, whose use will not intensify as a result of the approval of the requested variances from the boathouse requirements and the approval of the requested special exception from the accessory building floor area ratio requirement.

Therefore, the approval of the request for variances from the lot area, lot width, lake frontage, and open space requirements to permit the petitioner to transfer a portion of his lot to the adjacent lot to the northeast and the approval of variances from the boathouse requirements and of a special exception from the accessory building floor area ratio requirement to permit the boathouse to remain following the land transfer, with the recommended conditions, will not adversely affect the adjacent property owners, is not contrary to the public interest, and is in conformance with the purpose and intent of the Ordinance.

BA11:040 RICKY AND BETH STEINER:

Ms. Bonniwell

*I move to **approve** the request, subject to the conditions set forth in the Staff Report, with Condition No. 2 modified to require a Restoration Plan for the disturbed area to be submitted to the Planning and Zoning Division staff for review and approval prior to June 1, 2012, rather than prior to the issuance of a Zoning Permit.*

The reason are as set forth in the Staff Report and also that this proposal is making the property more conforming because the offset is increasing and because looking at the floor area ratio without consideration for the lower level of the detached garage is in keeping with the spirit of the Ordinance. The lower level of the detached garage doesn't put any more burden on the septic system and it is not living space. It really is more for storage and if it weren't a storage area, it would be filled, which is not desirable with it being so close to the lake. In addition, the open space is actually increasing by approximately 70 sq. ft. because of the requirement that the concrete area be removed.

The motion was seconded by Mr. Bayer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the remodeling a non-conforming structure in excess of 50% of its fair market value provision and from the floodplain setback, floor area ratio, and open space requirements of the

Waukesha County Shoreland and Floodland Protection Ordinance and **approval** of the request for a special exception from the offset requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the addition of a screen porch on the west side of the residence and to permit the residence to be remodeled and renovated, including the replacement of the existing mansard roof with a gable roof, subject to the following conditions:

1. Prior to the expiration date of the Zoning Permit, the 5.6 ft. x 10.2 shed/outhouse must be removed from the property.
2. Prior to the expiration date of the Zoning Permit, the existing concrete area around the shed/outhouse must be removed so that no concrete remains east of the east wall of the residence, other than a walkway and stairs leading to the side door. The maximum width of such a walkway and stairs shall not exceed 4 ft. The area of disturbance shall be restored and re-vegetated, without the installation of additional retaining walls. Prior to the issuance of a Zoning Permit, a Restoration Plan for the disturbed area, including a detailed Grading and Drainage Plan, prepared by a registered landscape architect, surveyor, or engineer, and a Landscape Plan, prepared by a registered landscape architect, must be submitted to the Planning and Zoning Division staff for review and approval. The intent of this condition is to ensure that the disturbed area is restored in a manner that does not result in adverse drainage onto the adjacent property. The following information must also be submitted along with the restoration plan: a timetable for completion, the source and type of any fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owners from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. A hardship exists with respect to the remodeling a non-conforming structure in excess of 50% of its fair market value provision of the Ordinance. Since the limit on remodeling a non-conforming structure over 50% of its fair market value is cumulative over the lifetime of the structure and it appears that the cost of the second story addition constructed in 1979 has neared that limit, no significant improvements can be made to the residence unless a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value is granted. Although the residence is in need of cosmetic improvements, it appears to be structurally sound and it is a building that was previously permitted to be remodeled and expanded. Therefore, denial of the requested variance from the remodeling a non-conforming structure in excess of 50% of its fair market value would be unnecessarily burdensome.

The size of the lot, the shallow lot depth, and the steep slopes on the property justify relief from the floodplain setback, floor area ratio and open space requirements. The proposed screen porch will be located on the side of the residence and it will conform with the shore

setback, road setback, and offset requirements. The screen porch would extend only six inches closer to the 100-year floodplain than the existing residence and, because it is elevated significantly above the 100-year flood elevation, it is in no danger of flooding. Denial of the requested floodplain setback variance would require the screen porch addition to end approximately 4.5 ft. short of the north wall of the residence. This would be aesthetically unappealing and unnecessarily burdensome. Further, the proposed screen porch will enhance the appearance of the residence and it is minimal in size, resulting in a net increase to the floor area and a net decrease to the open space of only 186 sq. ft. Therefore, it would also be unnecessarily burdensome to deny the requested floor area ratio and open space variances.

Due to the physical constraints of the lot, a new residence could not be constructed on the property in conformance with all Ordinance requirements. Although variances were granted in 2006 to permit the construction of a new residence and attached garage on the property, the existing residence is well-positioned on the lot and it is felt that allowing the existing residence to be renovated and remodeled will be less disruptive to the environment than the construction of a new residence. The proposed changes to the residence will not adversely affect the neighboring properties, are not contrary to the public interest, and they are in keeping with the variances that were previously granted to permit the construction of a new residence and attached garage on the property. Finally, approval of the requested special exception from the offset requirement to permit the proposed changes to the roofline and the outer wall of the second floor will actually increase the distance between the second floor outer wall and the east lot line. This is desirable and will not adversely affect the adjacent property or the public interest and welfare. Therefore, the approval of the request for variances from the remodeling a non-conforming structure in excess of 50% of its fair market value provision and from the floodplain setback, floor area ratio, and open space requirements and the approval of the request for a special exception from the offset requirement, to permit the addition of a screen porch on the west side of the residence and to permit the residence to be remodeled and renovated, including the replacement of the existing mansard roof with a gable roof, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA11:041 MICHAEL AND KARA KAISER:

Ms. Bonniwell

I move to approve the request for variances, consistent with the recommendations and conditions set forth in the Staff Report, with Condition No 4 modified to require the detached garage to be removed from the property no later than nine (9) months after the issuance of a Zoning Permit for an attached garage, rather than no later than six (6) months after the issuance of a Zoning Permit for an attached garage.

The approval of the requested variances will result in the removal of a non-conforming structure that is too close to the road and also increase the open space slightly. It does not seem that the proposed attached garage will have any adverse impact on the community or the neighbors.

The motion was seconded by Mr. Bayer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for approval of the request for variances from the floor area ratio and open space requirements and from the remodeling a non-conforming structure in excess of 50% of its fair market value provision of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the proposed interior remodeling of the residence, the proposed relocation of the entry, and the addition of an attached garage, subject to the following conditions:

1. The retaining walls must not exceed four (4) ft. in height and they must be located at least five (5) ft. from the side lot lines.
2. A detailed Grading and Drainage Plan, showing existing and proposed grades and all proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed attached garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.
3. A detailed cost estimate for the proposed construction and remodeling must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
4. The existing detached garage must be removed from the property no later than six (6) months after the issuance of a Zoning Permit for an attached garage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The residence is located in a conforming location and is non-conforming only because the open space on the property is slightly less than required and because the maximum permitted floor area ratio has been exceeded. Since the proposed attached garage is smaller than the detached garage it would be replacing by approximately two sq. ft., it will not reduce the existing open space or increase the non-conforming floor area ratio. Therefore, it would be unnecessarily burdensome not to permit the proposed replacement of the detached garage with an attached garage. It would also be unnecessarily burdensome not to permit the proposed interior remodeling of the residence and the relocation of the entry, since those changes would have no impact on the non-conformity of the residence.

In addition, the approval of the requested variances will eliminate a non-conforming detached garage and allow it to be replaced with an attached garage that will be in a conforming location. Further, the approval of the requested variances will allow the

construction of an attached garage that is in keeping with the attached garages on the two adjacent properties to the west and which will not adversely affect the adjacent properties or be contrary to the public interest. Therefore, the approval of the requested variances from the floor area ratio and open space requirements and from the remodeling a non-conforming structure in excess of 50% of its fair market value provision to permit the proposed interior remodeling of the residence, the proposed relocation of the entry, and the addition of an attached garage, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA11:042 KAREN AND GREG WILKEY:

Ms. Bonniwell

I move to deny the requested variance from the offset requirement to permit a boathouse to be located 7 ft. from the south lot line, but to approve an offset variance to permit a boathouse to be located 10 ft. from the south lot line, and to approve the requested shore setback variance to permit the existing retaining walls in the shore setback area to be repaired and partially replaced with less extensive retaining walls, with the conditions set forth in the Staff Report, with the following modifications:

Revised Condition No. 1 - "The boathouse must be located at least ten (10) ft. from the south lot line, at least five (5) ft. from the Ordinary High Water Mark of Okauchee Lake, outside of the 100-Year Floodplain, and at least thirty-two (32) ft. from the neighbor's oak tree that is located ten (10) ft. from the common lot line on the adjacent lot to the south, as measured to the outer edges of the walls, with overhangs that do not exceed two (2) ft. in width."

Revised Condition No. 2 - "The boathouse shall have a maximum width of 18 ft. and a maximum depth of 30 ft., not including any overhangs."

Revised Condition No. 10 - "Construction equipment shall be kept as far as possible from the mature oak trees near the lake. To ensure that the oak trees are protected during construction, orange construction fencing shall be installed around the three oak trees on the subject property and the oak tree on the adjacent lot to the south that is approximately 10 ft. from the common lot line, as far as possible from the trees, prior to the commencement of construction. The Planning and Zoning Division staff must be notified when the fencing is in place and shall make an inspection prior to work commencing. The construction fencing shall remain in place until construction is completed, except when it interferes with the retaining wall removal and replacement."

New Condition No. 12 - "There shall be no excavation within 30 ft. of the trunk of the mature oak tree located on the Smith property (the adjacent lot to the south) and the use of heavy equipment within 30 ft."

of the oak tree on the Smith property shall be kept to an absolute minimum."

New Condition No. 13 - *"The elevation of the first floor of the boathouse shall be no higher than 877 ft. above mean sea level."*

The reasons for this decision are that the approval of this request, as conditioned, will allow the petitioners to construct an adequate boathouse and still provide protection for the mature oak trees, both on the petitioners' property and on the adjacent Smith property, which benefits them and the community.

The motion was seconded by Mr. Bayer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the requested variance from the offset requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a boathouse 7 ft. from the south lot line, but **approval** of a variance from the offset requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a boathouse 10 ft. from the south lot line, subject to the conditions noted below. The Planning and Zoning Division staff also recommends **approval** of the requested variance from the shore setback requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the existing retaining walls in the shore setback area to be repaired and partially replaced with less extensive retaining walls, subject to the following conditions:

1. The boathouse must be located at least ten (10) ft. from the south lot line, at least five (5) ft. from the Ordinary High Water Mark of Okauchee Lake, and outside of the 100-Year Floodplain, as measured to the outer edges of the walls, with overhangs that do not exceed two (2) ft. in width.
2. The proposed boathouse must be reduced in size to a maximum width of 16 ft. and a maximum depth of 26 ft., not including any overhangs.
3. The boathouse may have a roof-top deck and it must have a garage-type door facing the lake. The height of the boathouse, as measured from the lowest exposed point to the highest point of the roof, not including any railings around a roof-top deck, shall not exceed 15 ft.
4. Prior to the issuance of a Zoning Permit, a complete set of plans for the proposed boathouse, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location of the boathouse, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. The rebuilt retaining walls must be no more than four (4) ft. high and they must be located at least five (5) ft. from the side lot line.
7. The relocated walkway/stairs shall be no more than four (4) ft. in width.

8. Prior to the issuance of a Zoning Permit, a Final Landscape Plan for the area to be disturbed by the construction of the boathouse and the retaining wall replacement must be submitted to the Planning and Zoning Division staff for review and approval. The Final Landscape Plan shall be in substantial conformance with the Preliminary Landscape Plan submitted with the application and shall incorporate plantings that are at least 25% native species and will screen the retaining walls from the lake. The approved Final Landscape Plan must be implemented prior to the expiration date of the Zoning Permit.
9. A detailed Grading and Drainage Plan, showing existing and proposed grades and the proposed replacement retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the proposed boathouse and replacement retaining walls do not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.
10. Construction equipment shall be kept as far as possible from the three mature oak trees near the lake. To ensure that the oak trees are protected during construction, orange construction fencing shall be installed around the three oak trees, as far as possible from the trees, prior to the commencement of construction. The Planning and Zoning Division staff must be notified when the fencing is in place and shall make an inspection prior to work commencing. The construction fencing shall remain in place until construction is completed, except when it interferes with the retaining wall removal and replacement.
11. A "Preliminary Site Evaluation" of the proposed boathouse and the septic system must be conducted by the Environmental Health Division. Prior to the issuance of a Zoning Permit, evidence must be submitted to the Planning and Zoning Division staff that the Environmental Health Division has no objection to the proposed boathouse and that it meets all required minimum separation distances and would not have an adverse effect on the operation of the private waste disposal system. If that cannot be done, a Sanitary Permit for a new waste disposal system must be issued, and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The presence of the mature oak trees creates a hardship when locating a boathouse. However, the relief granted by a variance should be the minimum relief necessary for a reasonable use of the property. It is felt that locating an 18 ft. x 30 ft. boathouse 7 ft. from

the side lot line, as proposed, exceeds minimum relief and that granting an offset variance to permit a 16 ft. x 26 ft. boathouse to be located at least 10 ft. from the south lot line, as recommended, will still allow the construction of a reasonably-sized boathouse. As recommended, a 16 ft. x 26 ft. boathouse located at least 10 ft. from the south lot line will still preserve the three mature oak trees near the lake, but it will result in less disturbance and reduce the possibility that the boathouse will adversely affect the adjacent property. Therefore, the approval of the construction of an 18 ft. x 30 ft. boathouse located 7 ft. from the south lot line would not be in conformance with the purpose and intent of the Ordinance, but the approval of an offset variance to permit the construction of 16 ft. x 26 ft. boathouse at least 10 ft. from the south lot line, as recommended, would be in conformance with the purpose and intent of the Ordinance.

Portions of the existing retaining walls are failing and it is felt that it would be unnecessarily burdensome and possibly harmful to the existing trees on the property, to require complete removal of the retaining walls. In addition, the overall length of the retaining walls is being reduced and the replacement retaining walls will be constructed of more natural materials. Further, the proposed modifications to the walkway/stairs will result in less extensive retaining walls and bring the non-conforming walkway/stairs into conformance with the Ordinance requirement that walkways and stairs within the 75 ft. shore setback area cannot exceed four (4) ft. in width. The proposed modifications to the retaining walls and the associated landscaping changes will not adversely affect the adjacent property owners and are not contrary to the public interest and they will improve the appearance of the property. Therefore, the approval of a shore setback variance to permit the existing retaining walls in the shore setback area to be repaired and partially replaced with less extensive retaining walls, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION: None.

WISLINE TELECONFERENCE:

Mr. Schmidt *I move to approve the attendance of Board of Adjustment members at a WisLine Teleconference sponsored by the University of Wisconsin - Extension Local Government Center, entitled "Plan Commission and BOA Members as Local Officials", to be held on Wednesday, December 21, 2011.*

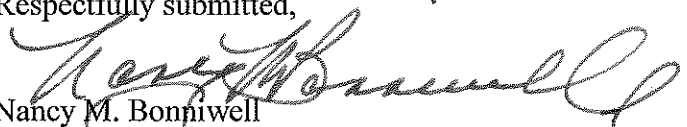
The motion was seconded by Ms. Bonniwell and carried unanimously.

ADJOURNMENT:

Mr. Schmidt *I move to adjourn this meeting at 8:22 p.m.*

The motion was seconded by Mr. Bayer and carried unanimously.

Respectfully submitted,


Nancy M. Bonniwell
Secretary, Board of Adjustment